

# Exhibit J

*State of California ex rel. Ven-A-Care of the Florida Keys, Inc.*  
**v. Abbott Laboratories, Inc., et al., Master Civil Action No. 01-12257-PBS,**  
**Subcategory Case No. 06-11337**

Exhibit to the December 21, 2009 Declaration of Christopher C. Palermo in Support  
of Defendants Mylan Inc. and Mylan Pharmaceuticals Inc's. Opposition to Plaintiffs' Motion for Partial Summary  
Judgment

Page 1

1 CAUSE NO. D-1-GV-07-001259

2 - - - -

3 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
4 ex rel. ) ) OF  
5 VEN-A-CARE OF THE )  
6 FLORIDA KEYS, INC. )  
7 Plaintiffs, )  
8 vs. ) TRAVIS COUNTY, TEXAS  
9 SANDOZ, INC. f/k/a GENEVA )  
10 PHARMACEUTICALS, INC., EON )  
11 LABS, )  
12 MYLAN PHARMACEUTICALS, INC., )  
13 MYLAN LABORATORIES, INC., )  
14 UDL LABORATORIES, INC., )  
15 TEVA PHARMACEUTICALS USA, )  
16 INC. f/k/a LEMMON )  
17 PHARMACEUTICALS, INC., CPLEY )  
18 PHARMACEUTICALS, INC. IVAX )  
19 PHARMACEUTICALS, INC., SICOR )  
20 PHARMACEUTICALS, INC., and )  
21 TEVA NOVOPHARM, INC., )  
22 ) 201st JUDICIAL  
Defendants. ) DISTRICT

17

18

19

20

21 - - - -

22 VIDEOTAPE DEPOSITION OF: DAVID L. WORKMAN

23 - - - -

24

25

	Page 2	Page 4
1	DATE: October 15, 2008 Wednesday, 9:00 a.m.	
2		1 APPEARANCES (CONTINUED):
3	LOCATION: Springhill Suites 1910 Hunters Way Morgantown, West Virginia	2 FOR THE STATE OF CALIFORNIA: Eliseo Sisneros, Esq. 3 consuelo.gutierrez@doj.ca.gov DEPUTY ATTORNEY GENERAL STATE OF CALIFORNIA 4 110 West "A" Street, Suite 1100 San Diego, California 92108 5 P 619-688-6043
4		6 FOR THE STATES OF ALABAMA AND MISSISSIPPI:
5	TAKEN BY: State of Texas	7 H. Clay Barnett, III, Esq. clay.barnett@beasleyallen.com 8 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. 272 Commerce Street 9 Post Office Box 4160 Montgomery, Alabama 36103 10 P 334-269-2343 F 334-954-7555
6		11 FOR THE DEFENDANTS MYLAN PHARMACEUTICALS, INC., MYLAN LABORATORIES, INC., UDL LABORATORIES, 12 INC.: William A. Escobar, Esq. 13 wescobar@kelleydrye.com KELLEY DRYE & WARREN, LLP 14 101 Park Avenue New York, New York 10178 15 P 212-808-7771 F 212-808-7897 16 -and- Erik C. Nath, Esq. 17 erik.nath@mylan.com MYLAN, INC. 18 1500 Corporate Drive Canonsburg, PA 15317 19 P 724-514-1846 F 724-514-1871
7	REPORTED BY: JoAnn M. Brown, RMR, CRR Notary Public Reference No. JB09091	20 ALSO PRESENT: John M. Lockwood, M.D., Ven-A-Care of the Florida 21 Keys Joseph Hagan, Videographer
8		22
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

	Page 3	Page 5
1	VIDEOTAPE DEPOSITION OF DAVID L. WORKMAN, a witness, called by the State of Texas for examination, in accordance with the Texas Rules of Civil Procedure, taken by and before JoAnn M. Brown, RMR, CRR, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the Springhill Suites, 1910 Hunters Way, Morgantown, West Virginia, on Wednesday, October 15, 2008, commencing at 8:56 a.m.	1 INDEX
2	APPEARANCES:	2 Examination by Mr. Pierce ----- 6
3	FOR THE STATE OF TEXAS:	3 Examination by Mr. Miller ----- 126
4	Archie Carl Pierce, Esq. cpierce@w-g.com	4 Examination by Mr. Barnett ----- 253
5	Christopher A. Shuley, Esq. cshuley@w-g.com	5 Certificate of Court Reporter ----- 276
6	WRIGHT & GREENHILL, P.C. 221 West 6th Street, Suite 1800 Austin, Texas 78701 P 512-476-4600 F 512-476-5382	6 Errata Sheet ----- 277
7	FOR VEN-A-CARE OF THE FLORIDA KEYS, INC.:	5 Notice of Non-Waiver of Signature ----- 278
8	Adam D. Miller, Esq. amiller@ellaw.com	6 EXHIBIT INDEX
9	ENGSTROM, LIPSCOMB & LACK, P.C. 10100 Santa Monica Boulevard, 12th Floor Los Angeles, California 90067 P 310-552-3800 F 310-552-9434 -and-	7 EXHIBIT PAGE
10	Glenn W. MacTaggart, Esq. gmactaggart@phmy.com	8 1 25
11	PRICHARD HAWKINS MCFARLAND & YOUNG Union Square, Suite 600 10101 Reunion Place San Antonio, Texas 78216 P 210-477-7419 F 210-477-7469	9 2 36
12		10 3 36
13		11 4A - 4L 62
14		12 5 127
15		13 6 129
16		14 7 133
17		15 8 151
18		16 9 161
19		17 10 175
20		18 11 187
21		19 12 201
22		20 13 209
23		21 14 214
24		22 15 220
25		23 16 232
		24 17 239
		25 18 263

2 (Pages 2 to 5)

	Page 102		Page 104
1	get into in light of some previous responses	1	invoice, that makes it an average of wholesale
2	you gave me.	2	cost?
3	A. Yes. Could I expand on my last answer?	3	MR. ESCOBAR: Objection to the form.
4	Q. Certainly.	4	A. It is not an average.
5	A. I don't remember if I was in a decision-making	5	Q. Okay.
6	process. I don't know if I was involved in a	6	A. It is a price point that is representative of
7	policy decision. I don't remember that. I	7	the wholesale acquisition cost.
8	believe we would get clarity under the	8	Q. All right. Is there any negotiation with the
9	interpretation.	9	customer as to what the WAC will be?
10	It has been Mylan's policy,	10	A. No, I don't believe there is.
11	throughout time, to be in compliance, and from	11	Q. Okay. And so when we go through these
12	our founder's own belief of doing things right	12	exhibits with negotiations, the bid process,
13	or not at all, I believe our interpretation or	13	the internal documents, there's no document
14	how we submitted forms, meaning Mylan as a	14	that's going to reflect a negotiation with the
15	company or Steve on behalf of Mylan, was done	15	customer as to where you've set the WAC?
16	appropriately, and I know of no reason why we	16	A. No.
17	would establish a policy not to do so.	17	Q. Okay. Because they negotiate a price other
18	Q. But as I understood your previous testimony,	18	than WAC with you, correct?
19	you're not part of any process that attempted	19	They don't care what the WAC is as
20	to interpret these forms?	20	far as what they're paying for the product?
21	MR. ESCOBAR: Objection to the form.	21	A. Meaning our wholesalers?
22	A. I was not.	22	Q. Yes.
23	Q. Okay. Thank you, Mr. Workman.	23	A. Yes, we do negotiate another price with the
24	Are you ready to proceed to the	24	wholesalers. That is for their source program
25	general discussion of WAC and educate me a	25	and auto-sub program, and let me explain

	Page 103		Page 105
1	little bit about that, please, sir?	1	something else, that our sales to wholesalers
2	A. Yes.	2	have evolved over time, and it has changed
3	Q. Okay. When Mylan sets a WAC, what is it?	3	significantly, and there's many processes and
4	A. What do you mean by the question "what is it"?	4	different transactions that are involved now,
5	Q. Does Mylan set its WAC?	5	and what I'm referring to in this testimony is
6	Does Mylan -- when we talk about a	6	that mechanism today. However, historically,
7	WAC number, is that a number that Mylan has	7	we invoiced wholesalers at WAC, and that was
8	set itself for its products?	8	their price for all of the product that they
9	A. Yes.	9	purchased from us. All right? There was a
10	Q. Okay. And what is it after they've set it?	10	full-line wholesale agreement in which we
11	A. Are you asking me the price or are you asking	11	would provide a discount, and that could be a
12	me what it represents?	12	percentage off that. That was their net price
13	Q. What it represents is probably a better way to	13	points.
14	ask the question.	14	There was an initiative by a
15	What does it represent?	15	wholesaler that occurred where they had
16	A. It is our invoice pricing to our wholesalers.	16	warehouses full of multiple manufacturers for
17	It is representative of the wholesale	17	the same product, and they wanted to eliminate
18	acquisition cost.	18	multiple manufacturers for the same product in
19	Q. And how is it representative of the wholesale	19	their warehouse, and I believe the customer
20	acquisition cost other than it is on the	20	was Bergen Brunswig, and they created an auto-
21	invoice?	21	sub/source program where they contacted all
22	A. It is what we invoice wholesalers when they	22	the manufacturers and they said, we are going
23	purchase our product. They are responsible	23	to put our entire stocking portfolio out to
24	for the payment of that invoice.	24	bid to all the manufacturers, and this is how
25	Q. And what is it, other than being put on the	25	you respond to this bid, and this is what

<p>1 transactions you need to perform. And it was      2 competitive bid processing, and from what we      3 understood, the most aggressive or the lowest      4 price won their warehouse space, and instead      5 of a pharmacy ordering up Mylan's product,      6 they would just order up the product in      7 general, and whoever's product was stored in      8 inventory in that warehouse space would then      9 be shipped to their customers. So, that was      10 the evolution of the source program.</p> <p>11 Today, we invoice wholesalers at      12 WAC. They're responsible for that invoice.      13 They sell to pharmacies under a source      14 program. They sell to pharmacies that are      15 members under our third-party contracts. They      16 also sell to pharmacies that are on neither a      17 third-party contract or their source program.</p> <p>18 When they do sell a product out      19 under their source program or under a third-      20 party contract, at a designated negotiated      21 contract price, a chargeback is processed, and      22 a chargeback is the difference between WAC and      23 that contract price. If they sell it to a      24 pharmacy that is not a part of a third-party      25 contract or not a part of their source</p>	<p>Page 106</p> <p>1 acquisition cost?      2 Do you know how often, percent-wise      3 or however you want to define it, that, in      4 fact, Mylan customers pay the full WAC invoice      5 without any reduction from any source?      6 MR. ESCOBAR: Objection to the form.      7 A. We have some products in our line right now      8 that the only price point that we charge is      9 WAC. So, those do exist, yes, and let me      10 explain this.      11 Q. Can I ask you to identify those products?      12 MR. ESCOBAR: Let him --      13 A. You could.      14 MR. ESCOBAR: Let him answer the      15 question.      16 Q. Okay. Help me remember to ask you for those      17 products. Go ahead and give me your      18 explanation.      19 A. Now, when an order comes in from a wholesaler,      20 it is not for one bottle and it's not for one      21 product, it is a multiple-line order, and what      22 we ship to them has multiple lines on that as      23 well. Okay? So, that invoice is created for      24 the products that were shipped under that      25 order. Like I said, not for one bottle, not</p>
<p>1 program, we would not receive a chargeback for      2 that, so they would be responsible for that      3 invoice.</p> <p>4 Again, WAC is the invoice price to      5 the wholesaler. We have prompt payment terms      6 to those wholesalers. Generally, it's a 2      7 percent discount if it's paid within a certain      8 time period. So, there is an evolution over      9 time of -- WAC is a real price, and      10 wholesalers, their net prices were based upon      11 that WAC price, but, over time, it evolved      12 where they established their own contract and      13 their own contract price, and that was for      14 their source program, not their entire book of      15 business.</p> <p>16 Q. I appreciate that very much.</p> <p>17 Let me follow up with this for my      18 clarification -- your answer was excellent,      19 but that doesn't mean I can understand every      20 aspect of it. But you said wholesalers are      21 responsible for that invoice, and you used the      22 term "responsible", and I want to try to see      23 if there's a way to determine how often that      24 invoice WAC price is paid in full, and,      25 therefore, does it represent a true</p>	<p>Page 107</p> <p>1 for one invoice price. There are many      2 transactions that occur, meaning sales to      3 third-party contracts, sales to -- under their      4 own source program, we receive returned      5 merchandise from them, we receive chargebacks      6 from them, and it is not a transaction or an      7 invoice that is paid in a vacuum. There are      8 many moving parts to that invoice, including      9 the 2 percent prompt payment.      10 So, are they responsible for that in      11 full? Yes, but that invoice is reconciled      12 under other transactions through our accounts      13 receivable department, and this is not a      14 one-time purchase. This is a continual      15 process between the manufacturer and the      16 wholesaler.      17 Q. And it's done primarily electronically?      18 A. We do invoice electronically. We do      19 chargebacks and chargeback reconciliations      20 electronically. They submit orders to us      21 electronically as well.      22 Q. And for your big customers, your big      23 wholesalers, your big chains, your big GPOs,      24 do you all, in fact, have some sort of      25 computer interface to accomplish that?</p>

Page 118	Page 120
1 Q. And they pay that WAC without any reduction, 2 other than the 2 percent prompt pay, because 3 there's no circumstances for them to reduce 4 it?	1 correct? 2 A. Yes.
5 A. Yes.	3 Q. -- do you routinely and usually send out an 4 AWP and a WAC to those customers who are 5 involved in the bidding process?
6 Q. And is this something separate and apart from 7 the situations you've already told me about? 8 These customers?	6 A. We do send out an AWP with our offers. To the 7 wholesalers, we send out our WAC.
9 A. Well, another piece of that is where they 10 purchase our product and maybe they do service 11 a third-party contract and maybe they do have 12 a source program, however, that product is not 13 on a third-party contract that they would 14 service or it is not under their source 15 program.	8 Q. When -- those price point references that 9 we've talked about, A, B, C or A, B, C and D? 10 A. Yes.
16 Q. And does it still fall in the category of what 17 you told me about previously? It happens, but 18 it's a small amount of the business, and it 19 happens rarely?	11 Q. And when those bidding processes end up in a 12 contract --
20 A. I don't know the frequency, but I'm talking 21 about other products that we may have contract 22 prices with and not just a subset of the 23 products that I just described.  24 If a wholesaler orders a product and 25 warehouses a product or for a particular	13 A. Yes. 14 Q. -- and the price is going down for a 15 particular product -- we saw some examples in 16 the exhibits we talked about, correct? 17 A. Yes. 18 Q. -- and if the price goes down and that range 19 of prices goes down for a class of trade, does 20 the WAC go down with it? 21 A. At times. 22 Q. And give us the circumstances when the WAC 23 would go down with it? 24 A. This is a highly-competitive industry where 25 our products are commoditized quickly after

Page 119	Page 121
1 customer who is requesting our product, 2 however, that product is not under a third- 3 party contract that they service or even under 4 their source program, that is another 5 illustration of how a wholesaler could order 6 and be responsible for the full WAC, because 7 we would not be receiving a chargeback either 8 for a third party or for their source program.  9 Q. And how often does that happen?	1 launch or at launch, depending upon the timing 2 of our approval. We establish our AWP. We 3 establish our WAC. They are independent of 4 each other. Our AWP is less than the brand. 5 Our WAC is less than the AWP. For any 6 particular product, for any particular 7 customer, for any particular circumstance, 8 prices may be different. Our WAC is our 9 wholesale acquisition cost, the price that we 10 invoice to our wholesalers. We negotiate and 11 bid contract prices. Over time, those 12 contract prices may erode. Over time --
10 A. I don't know the frequency, but it does 11 happen, and it's for other products other than 12 the subset of products that I described.  13 Q. And can you give us any -- is it less than 1 14 percent of the business, 2 percent, whatever 15 number you're comfortable with telling me?	13 Q. Go down? 14 A. Yes, go down, and, at times, we have increased 15 contract prices, but we assess our contract 16 prices with our costs, and we try to manage 17 our business.
16 A. I don't know. I do know it happens. I don't 17 know if it happens frequently, infrequently or 18 on a case-by-case basis. I imagine it's a 19 case-by-case basis, and once it occurs, then 20 either a group or the wholesaler itself would 21 call us and want to negotiate contract 22 prices. However, it does occur.  23 Q. Okay. When you're involved in the bidding 24 process -- which is part of pricing and 25 contracts' duties and responsibilities,	18 Now, with this WAC and with a third- 19 party contract that purchases the product 20 primarily through the wholesaler, there is 21 that 2 percent prompt pay liability and also 22 the difference between WAC and their contract 23 price that we try to management. Now, every 24 product and every situation and every 25 competitive bid is different, but we try to

Page 162		Page 163	
1 A.	That's an acronym. I'm not entirely sure what the HCFA acronym stands for. I think it's actually what CMS is now.	1	we were talking about FUL, and you stated it's a federal upper limit.
2 Q.	So, it's a governmental agency of some type?	2	What is that, if you know?
3 A.	Yes.	3	4 A. I believe it's a limit on which CMS has decided to reimburse pharmacies at.
4 Q.	So, HCFA FUL -- F-U-L, in caps -- List. This is the subject matter.	5	6 Q. And do you know who sets the FUL?
5	I see, towards the bottom, that you are part of the e-mail string, and do you remember this particular e-mail?	7 A. I believe CMS.	8 Q. And do you know when the FUL -- under what circumstances a FUL is set?
6		9	10 A. No.
7		11	12 Q. And do you know what are the consequences, if any, if one of your generic products were to no longer be governed by a FUL?
8		13	14 MR. ESCOBAR: Objection to the form.
9		15 A. Could you repeat the question, please?	16 Q. Yes.
10		17	If one of Mylan's generic products which had been subject to a FUL had -- was then no longer subject to a FUL, all right, what are the consequences of that for Mylan and its pricing, if any?
11		18	19 MR. ESCOBAR: Objection to the form.
12		20	21 A. I don't believe that it would be a consequence to Mylan.
13		22	23 Q. Would that be an opportunity at that time, if
14		24	
15		25	
Page 163		Page 165	
1 A.	I don't recall this e-mail. I don't recall receiving similar e-mails. As stated in your prior question, I may have. I may have looked at these.	1	the FUL is lifted on a particular product, for you to then raise your AWP?
2		2	3 A. I believe that it would allow the pharmacy to charge more. I believe that Mylan could raise its price. However, I don't believe that that ability to do so is solely dependent upon whether an FUL exists or not.
3		4	5 Q. Well, would it be accurate, if you know, whether a FUL is always or almost always lower than AWP?
4		6	7 A. I don't know.
5	The majority of my time today is looking at our prices to our customers and responding to our customer inquiries. This is not a project, an assignment, an analysis that is a regular work of myself or anyone in our department.	8	9 Q. Is that your answer?
6		10 A. Yes.	11 A. Well, you don't know the interplay between FUL and AWP? Would that be an accurate statement?
7		12	13 Q. Well, I don't know.
8		14	15 Q. Do you even know what FULs are used for by Mylan?
9		16	17 MR. ESCOBAR: Objection to the form.
10		18	19 A. I don't believe we use FULs.
11		20	21 Q. So, it would be of little concern to Mylan and the sales teams at Mylan whether or not there was a federal upper limit on any particular Mylan product?
12		22	
13		23	
14		24	
15		25	